APPENDIX

Section 1718, page 700, of General Statutes (Sec. 1287 of Revised Statutes). *Action for the recovery of real property.*—No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appear that the plaintiff, his ancestor, predecessor or grantor, was seized or possessed of the premises in question within seven years before the commencement of such action.

Section 1719, page 700 of General Statutes (Section 1288 of Revised Statutes). *Actions founded on the title to real property.*—No cause of action or defense to an action founded upon the title to real property, or to rents, or to service out of the same, shall be effectual unless it appear that the person prosecuting the action, or making the defense, or under whose titles the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within seven years before the accruing of the right of action or defense in respect to which such action is prosecuted or defense made, or unless it appear that the title to such premises was derived from the United States or the State of Florida, within seven years before the commencement of such action; and the period of limitation shall not begin to run until the passage of the title from the State or the United States.

Section 1720, page 700 of General Statutes (Section 1289 of Revised Statutes). *Possession by legal*

owner presumed.—In every action for the recovery of real property, or of the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time prescribed by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for seven years before the commencement of such action.

Section 1721, page 700, of General Statutes (Sec. 1290 of Revised Statutes). *Adverse possession under color of title.*—1. Continued occupation for seven years required.—Whenever it shall appear that the occupant, or those under whom he claims, entered into possession of premises under the claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premises in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree or judgment for seven years, the premises so included shall be deemed to have been held adversely; except that where the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

2. *Definition of possession and occupation required.*—For the purpose of constituting an adverse possession by any person claiming a title founded

upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied, in the following cases:

1. Where it has been usually cultivated or improved.

2. Where it has been protected by a substantial enclosure.

3. Where (although not enclosed) it has been used for the supply of fuel, or for fencing timber for the purpose of husbandry, or for the ordinary use of the occupant; or

4. Where a known lot or single farm has been partly improved, the portion of such farm or lot which may have been left not cleared or not enclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved or cultivated.

Section 1725, page 703, of General Statutes (Sec. 1294 of Revised Statutes). *Limitations.*—Actions other than those for the recovery of real property can only be commenced as follows:

* * * 4. *Within Four Years.*—Any action for relief not specifically provided for in this chapter.

IN THE

Supreme Court of the United States

October Term, 1925

No. 184

ENRIQUE DEL POZO Y MARCOS ET AL,
Appellants,

vs.

WILSON CYPRESS COMPANY,
a Corporation,
Appellee.

Protest of Appellee to Appellants' Motion to Hear Case upon Six Copies of Former Record, Etc.

Appellants' motion that this cause be heard upon six copies of the chief part of the record must be considered as supplemental to appellants' motion presented to the Court one year ago. The clear implications of appellants' former motion are that an ample printed supply of this chief part of the record was available, and to reprint would merely and unnecessarily duplicate printing costs. Had the court then been aware of the facts which appellants now present, the Court, under its rules, would have denied the motion. Were this not so, then every successful petitioner for a writ of certiorari would follow the granting of the writ with a motion to hear the case on the ten copies of the record which accompanied the petition.

Therefore, it now appears that the granting of appellants' former motion was improvident, under the rule announced in *Furness, Withy, & Co. vs. Yanz-Tsze Insurance Association*, 242 U. S. 430, 61 L. Ed. 409, wherein it is said:

> "The writ of certiorari was improvidently granted and must be dismissed. We should have denied the petition therefor if the facts essential to an adequate appreciation of the situation had then been brought to our attention. Petitions of this character are at the risk of the party making them, and whenever, in the progress of the cause, facts develop which, if disclosed on the application, would have induced a refusal, the court may, upon motion by a party, or *ex mero motu*, dismiss the writ."

The rules of this court require *appellants* to supply a sufficient number of printed copies of the record for the use of the court, and also for the use of counsel for both parties. This is a duty resting upon an appellant.

An appellee is under no such obligation. For an appellant to move that counsel for appellee be required to deliver up their office copy of a former record in order to relieve appellant from complying with the established rules of this court, is without merit, not in accordance with law, and will not appeal favorably to the Court.

Appellants' new motion is *a belated effort* to overcome their failure over the period of an entire year even to attempt in any particular to meet the rules of this court governing the printing of transcripts. The motion now presented by appellants was not served upon counsel for appellee the requisite length of time previously to presenting the motion to the court. This service was not made until ten days after counsel for appellants had been served with the two motions of appellee, and briefs

in support thereof, that the appeal be dismissed or an order of affirmance entered. The conclusion is apparent, that *appellants' motion is an attempt to counteract the two motions of appellee previously served.*

Appellee protests the filing or consideration of this motion of appellants. We submit that if any consideration be given the motion, the necessary result will be to revoke the order of court of October 13, 1924, permitting the case to be heard on a limited number of printed transcripts, upon the ground that such order now appears to have been improvidently entered.

Respectfully submitted,

J. C. COOPER,
HENRY C. CLARK,
Solicitors and Counsel for Appellee